

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BERNARD WARREN,

Plaintiff,

No. C 15-5208 EDL (PR)

v.

**ORDER DISMISSING WITH
LEAVE TO AMEND**

SONOMA COUNTY PUBLIC HEALTH
(T.A.S.C.) and TURNING POINT DRUG
TREATMENT FACILITY
MANAGEMENT,

Defendants.

Plaintiff, an inmate at the Sonoma County Jail's Main Adult Detention Facility, has filed a pro se civil rights complaint under 42 U.S.C. § 1983.¹ He has been granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the complaint is DISMISSED with leave to amend.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at § 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of

¹ Plaintiff has consented to magistrate judge jurisdiction. (Docket No. 3.)

1 the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary;
2 the statement need only give the defendant fair notice of what the . . . claim is and the
3 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and
4 internal quotation marks omitted). Although in order to state a claim a complaint “does not
5 need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his
6 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation
7 of the elements of a cause of action will not do. . . . Factual allegations must be enough to
8 raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S.
9 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim
10 for relief that is plausible on its face.” *Id.* at 570.

11 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
12 elements: (1) that a right secured by the Constitution or laws of the United States was
13 violated, and (2) that the alleged deprivation was committed by a person acting under the
14 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

15 **B. Legal Claims**

16 Plaintiff states that on August 24, 2015, he entered into Sonoma County’s drug
17 treatment facility, Turning Point Drug Treatment Facility Management (“Turning Point”).
18 Plaintiff had an existing ruptured achilles tendon when he arrived at Turning Point. Plaintiff
19 was instructed to keep an ice pack on his leg, but at some point, the ice pack burst open,
20 and the contents of the ice pack landed on his leg, causing a chemical burn. Plaintiff was
21 sent to urgent care for treatment. The following day, plaintiff was medically discharged
22 from Turning Point. As a result, plaintiff was re-housed into the Sonoma County Jail.
23 Plaintiff requests monetary damages.

24 Plaintiff’s complaint, as pleaded, fails to state a cognizable claim for relief. In order
25 for a complaint to state a claim arising under federal law, it must be clear from the face of
26 plaintiff’s well-pleaded complaint that there is a federal question. *See Easton v. Crossland*
27 *Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997). Here, it is unclear what federal right, if
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1 any, he believes was violated.

2 As to each defendant plaintiff seeks to hold liable, plaintiff must clarify his claim(s)
3 against him/her. In the amended complaint, he should describe what each defendant did
4 (or failed to do) that caused a violation of his constitutional rights so that each proposed
5 defendant has fair notice of his allegedly wrongful conduct. See *Taylor v. List*, 880 F.2d
6 1040, 1045 (9th Cir. 1989) (liability under § 1983 arises only upon a showing of personal
7 participation by a defendant). Liability may be imposed on an individual defendant under
8 42 U.S.C. § 1983 if the plaintiff can show that the defendant's actions both actually and
9 proximately caused the deprivation of a federally protected right. *Lemire v. Cal. Dept. of*
10 *Corrections & Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir. 2013). Plaintiff must link the
11 defendants' actions or inactions with plaintiff's claims. He must "set forth specific facts as
12 to each individual defendant's" actions which violated his or her rights. *Leer v. Murphy*, 844
13 F.2d 628, 634 (9th Cir. 1988). Either personal involvement or integral participation of the
14 officers in the alleged constitutional violation is required before liability may be imposed;
15 liability may not be imposed based solely on an officer's presence during the incident. See
16 *Hopkins v. Bonvicino*, 573 F.3d 752, 769-70 (9th Cir. 2009).

17 To impose municipal liability under Section 1983 for a violation of constitutional
18 rights, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of which he
19 or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to
20 deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the
21 moving force behind the constitutional violation. See *Plumeau v. School Dist. #40 County*
22 *of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997).

23 For the above reasons, plaintiff's complaint will be dismissed with leave to amend to
24 provide the information as specified above. Although the federal rules require brevity in
25 pleading, a complaint must be sufficient to give the defendants "fair notice" of the claim and
26 the "grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
27 omitted). Even at the pleading stage, "[a] plaintiff must allege facts, not simply conclusions,
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1 that show that an individual was personally involved in the deprivation of his civil rights.”
2 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

3 CONCLUSION

4 1. The complaint is **DISMISSED** with leave to amend in accordance with the
5 standards set forth above. The amended complaint must be filed within **twenty-eight (28)**
6 **days** of the date this order is filed and must include the caption and civil case number used
7 in this order and the words AMENDED COMPLAINT on the first page. Because an
8 amended complaint completely replaces the original complaint, plaintiff must include in it all
9 the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
10 1992). He may not incorporate material from the original complaint by reference. Failure to
11 file an amended complaint within the designated time and in compliance with this order will
12 result in the dismissal of this action.

13 2. It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the court
14 informed of any change of address by filing a separate paper with the clerk headed “Notice
15 of Change of Address,” and must comply with the court's orders in a timely fashion. Failure
16 to do so may result in the dismissal of this action for failure to prosecute pursuant to
17 Federal Rule of Civil Procedure 41(b).

18 **IT IS SO ORDERED.**

19 Dated: February 29, 2016

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21 ELIZABETH D. LAPORTE
22 United States Magistrate Judge
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